IN THE HIGH COURT OF JUDICATURE: ANDHRA PRADESH

AT HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

THURSDAY THE EIGHTEENTH DAY OF NOVEMBER

TWO THOUSAND AND FOUR

PRESENT:

THE HONOURABLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

AND

THE HONOURABLE JUSTICE SRI C.V. RAMULU

WRIT PETITION NO. 14872 OF 2004

BETWEEN:

N. Dolendra prasad S/o N.V.S. Raghavayya

Zamin Ryot Building, Pogathota, Nellore-524101.

…Petitioner.

And

1. Government of A.P., Irrigation and Command

Area Development, represented by its Principal

Secretary, Secretariat, Hyderabad.

2. Engineer-in-Chief, Irrigation Department,

Erramanzil, Hyderabad.

3. I.V.R.C.L. Infrastructures and projects Ltd.,

M22, 3RT, Vijayanagar Colony, Hyderabad-57.

4. M/s Maytas Infra Limited,

6-3-1186/5/A, 3rd Floor, Amkogh Plaza,

Begumpet, Hyderabad-16.

5. Hindustan Construction Company Limited

Hincon House, L.B.S. Marg, Vikhroli (W)

Mumbai-400083.

6. L & T Mount Poonamalle Road,

Manapakkam, Chennai-600089.

7. Gaman India, Gaman House,

Near Siddivinayaka Temple,

Prabhadevi, Dadar, Mumbai.

8. Patel Engineering Limited,

Engineers and Contractors, Patel Estate,

S.V. Road, Jogeshwari (W),

Mumbai-400102.

9. J.V. Gayatri,

6-3-1090/C/A/1, Lovely Mansiion,

1st Floor, Rajbhavan Road,

Somajiguda, Hyderabad-82.

10. Progressive Constructiions,

Progressive Towers, Kharatabad,

Hyderabad.

11. Skanska Cementation India Limited,

P.O. Box No.11006, Mumbai-400020.

…Respondents.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction, declaring the action of the respondents 1 and 2 in resorting to the procedure of selecting pre-qualified tenderers for the purpose of limiting the awarding of the Water Resource & irrigation Development Projects in the State of Andhra Pradesh and in purporting to select respondents 3 to 11 alone as such pre-qualified tenders for the said purpose as being illegal, arbitrary, unconstitutional apart from being contrary to Public Interest and consequently set aside the same ad further direct respondents 1 and 2 not to give effect to the said decision of allotting works of Water resource and irrigation Development Projects only to pre-qualified tenderers and pass such further order or orders as this Hon'ble Court may deem fit and pr0per in the circumstances of the case.

Counsel for the Petitioner : Sri D. Prakash Reddy,

Fork Sri S. Niranjan Reddy.

Counsel for the Respondent 1 & 2 : The Advocate General

Counsel for the Respondent 4 : Sri C.V. Mohan Reddy

Counsel for the Respondent 9 : Sri C.V. Nagarjuna Reddy.

Counsel for the Respondent 6 : Sri C.R. Sridharan.

Counsel for the Respondent 11 : Sri V. Ravinder Rao.

The Court made the following **JUDGMENT**:

(per THE HON'BLE THE CHIEF JUSTICE SHRI DEVINDER GUPTA)

Petitioner, an Editor of Telugu News Weekly "Zamin Ryot" has filed this petition in Public Interest, alleging infirmities, irregularities and illegalities alleged to have been committed by respondents 1 and 2 in adopting a new procedure for short-listing Pre-qualified Contractors for entrusting the work of completing the on-going Water Resource and Irrigation Development Projects and such other like projects to be undertaken by the State Government. Challenge is also to the short-listing of nine Contractors (respondents 3 to 11), as arbitrary.

2. Petitioner claims that the News Weekly "Zamin Ryot" was established in 1930 and is the oldest Telugu News Weekly having wide circulation throughout the State of Andhra Pradesh and it has always focused on various issues relating to the problems of farmers in the State and has been striving for various agrarian reforms. It has been at the forefront of seeking implementation of land reforms and had also fought against the Zamindari System. The News Weekly has also sought to present various other problems and issues concerning the farmer community and others and has been striving to bring various issues to the notice of the concerned

Governments. In this connection, the petitioner thought it fit to invoke the extraordinary jurisdiction of the Court in highlighting the alleged irregular mode adopted in resorting to short-list the pre-qualified Contractors for completing irrigation projects, which, according to the petitioner, is detrimental to the interests of the State and the farmers in the long run.

3. The facts-in-brief as highlighted by the parties are that soon after the present Government took over, a decision was taken for giving top priority to the Irrigation Projects, keeping in view the chronic drought conditions prevailing in the State resulting in large-scale suicides by farmers and for optimum utilization of available water resources. In order to achieve that objective, the Government decided to complete the on-going Irrigation Projects within a period of two years and to complete the remaining Major Projects in the next five years. The primary aim being to solve the water problem in the State and to improve irrigation potential. Thus, it was decided to empanel agencies to execute the projects possessing the pre-qualified criterion. Accordingly, on 27.6.2004, a Tender Notice was published in the newspapers inviting offers for selection as pre-qualified tenderers for entrustment of Water Resource Development Projects. The said notice specified that the Government of Andhra Pradesh had proposed to complete all the important Projects in progress and also to take a number of new projects and to complete the same within a period of five years to augment the irrigation potential. The main component of the Projects were identified as the Earth Dams, Spillway Structures, Concrete/Masonary, Non-overflow Dams, Lift irrigation Dams and Canal system. The tender notice specified that the works would be divided into suitably large convenient packages and bids would be invited for Engineering Procurement Construction (EPE) on turn-key system (including investigation, design, preparation of construction drawings, cost estimates, construction, maintenance and operation of the same etc.) only from pre-qualified bidders.

4. The Pre-qualification Documents issued by the Government includes general instructions to be followed by the applicants. The same laid down the conditions to be fulfilled by the applicants, which, inter alia, provide that only applicants registered with the Government of Andhra Pradesh with valid registration under Special Class in Civil, in terms of various G.Os, are only eligible for participation. Clause 1 of General Instructions to applicants laying down the essential conditions reads:

The notice is issued to apply for consideration to be included in the panel of agencies to be short-listed and prescribe the following qualification criteria:

a. The bidder/firm/company registered with Government of Andhra Pradesh with valid registrations under special class, Civilian terms of the following G.Os are only eligible for participation i.e.

1. G.O.Ms.No.521, I & CAD dt. 10.12.1984 2. G.O.Ms.No.178, I & CAD dt.27.9.19973. G.O.Ms.No.132, I & CAD Dt.11.8.1998	Special Class with specialization in 1. Earth-work & canal lining.2.Construction of bridges and other structures.
4. G.O.Ms.No.94, I & CAD Dt.1.7.2003.	Special Class Civil Works.

b. Annual turn over: the bidder/firm/company on his name should have achieved in at least two financial years a minimum annual financial turn over in all class of Civil Engineering Works of value not less than Rs.400 crores in block period of preceding five financial years.

c. The bidder/firm/company should have satisfactorily completed not less than 90% of contract value as a prime contractor of at least one similar work of magnitude not less than Rs.100 cores in the block period preceding five financial years.

d. Similar works are the works of Dams/Barrages/Canal system including CM & CM works & Hydraulic tunnels/Lift irrigation Canal Schemes/Hydro-Electric Projects.

e. The bidder/firm/company must have a net worth of Rs. 100 crores.

f. The bidder/firm/company must have been making a net profit (before tax) for the last three years.

g. The bidder/firm/company should have ISO certification.

h. In case if the application is from a joint venture, it should satisfy the following minimum criteria.

i. The No. of partners in the Joint Venture shall not be more than three.

ii. One partner of the joint venture should meet the requirement as prescribed at para 1(b) and all partners should meet 25% of the annual turn over as prescribed at para 1(b) individually.

iii. One partner of joint venture should meet similar work criteria as prescribed at para 1(c).

iv. All partners of joint venture should meet ISO Certificate as prescribed in para 1(g).

vi. All the joint venture partners should have registered with Government of Andhra Pradesh with valid registration under special class, civil terms of the aforesaid GOs and are only eligible for participation.

Vii. The joint venture partner of one bidder/firm/company shall not enter into joint venture partnership with another bidder/firm/company for the empanelment.

viii. All the joint venture partners should meet the criteria as prescribed at para 1(f) individually.

5. Expressing some doubts the petitioner alleged that the same are genuine as regards the bona fides of the State Government in resorting to the procedure of selecting Pre-qualified Tenderers. The petitioner alleged that the very procedure adopted by respondents 1 and 2 in selecting Pre-qualified Tenderers is not in the general interest of the public or the State. The possibility of competitive bidding, which is the essence of the tender process, is greatly reduced and the procedure of having Pre-qualified Tenders would result in reduced competition and the perpetuation of only a few pre-qualified contractors being considered for various Water Resource and Irrigation Development Projects. The probabilities of cartelization and the formation of syndicates would also be much higher. The

petitioner also entertained some more doubts saying that it is also quite probable that with the magnitude of works that are being professed to be taken up in the next few years, any contractor having successfully offered its bid for one work may not be interested for bidding in respect of the other works, for various reasons. The competitive circle would thus get progressively reduced with each work. Therefore, even amongst the pre-qualified contractors, it is only the more resourceful of the contractors who would continue to have the ability for participating and availing works/contracts on a progressively diminishing competitive environment. It is also highly probable that in view of the limited number of pre-qualified contractors who would all be assured of getting adequate work for each of them, the tender and bidding process for works would not be completely fair and competitive which would result in higher tender rates and greater cost outlays. The same would result in the State exchequer spending more public funds to the detriment of the general public.

6. The petitioner alleged that most of the contractors in India do not have the technical wherewithal or ability for designing, preparation of construction, drawings, cost estimate etc. The practice hitherto being followed by public enterprises has been to engage technical personnel or the department personnel or preparing such design, construction, drawings, cost estimates etc. and thereafter to invite tenders. As works would now be allotted to contractors inclusive of all technical details, either there would be no supervision of the manner in which the qualified tenderers go about preparing the designs, drawings and estimates leading to severe deficiency in designing and execution or alternatively the same would be subjected to a subsequent supervision/ratification which would involve huge delay and unnecessary cost escalation. In either of the situations, the petitioner alleged that it is the Government and general public that would be subjected to tremendous loss inasmuch as all the costs are proposed to be recovered in the long run by way of water cess charges from the farmers. Otherwise the said costs or charges must be met from the funds of public exchequer.

9. By the time the writ petition had been filed, nine contractors had been declared as Pre-qualified Tenderers who have been impleaded in the petition as respondents 3 to 11. The petitioner has also challenged the action of the Government in selecting the nine contractors saying that the method and manner in which only nine contractors have been selected would show arbitrariness and colourable exercise of power. It was alleged that the whole exercise was done in a

deliberate manner designed for achieving a purpose not otherwise provided for under law. The said action, therefore, suffers from malice in law and the same is not sustainable.

10. The petitioner also questioned the action of respondents 1 and 2 in relaxing some of the conditions which were insisted in the advertisement/tender notice saying that it could not be done after advertisement had been issued and that also selectively in favour of a few. The petitioner alleged that in view of the stringent eligibility conditions that were prescribed, several contractors were deterred from applying, as they did not completely satisfy the eligibility criteria. Respondents 1 and 2 have relaxed various eligibility conditions in respect of some of the pre-qualified tenderers, for the purpose of qualifying them as pre-qualified tenderers. Relaxations were granted in relation to the conditions specifying compulsory registration with the Government of Andhra Pradesh, the production of ISO 9000 Certification. The relaxation/exemptions granted by the respondents 1 and 2 were not notified in advance and were not done in a transparent and fair manner. Had the first respondent granted a general relaxation by notifying the same several other contractors would have also been eligible and could have applied and could have been selected as pre-qualified tenderers. The petitioner alleged that the action of respondents 1 and 2 in selectively granting exemptions/concessions of the eligibility conditions in favour of some of the selected tenderers would show that the entire exercise was not done in a bona fide and transparent manner and that the selection was also motivated by extraneous considerations. In any case, the petitioner alleged that the procedure did not satisfy the tests of ‘transparency’, ‘reasonableness’ and ‘fairness’, held by the Supreme Court as being intrinsic to the public tender system of the Government.

11. In nutshell, the petitioner alleged that the resultant effect of impugned action of respondents 1 and 2 in selecting nine pre-qualified tenderers would affect public interest and would continue to impair public finances and thus on 18.8.2004 he approached this Court to declare the actions of respondents 1 and 2 in resorting to the procedure of selecting the pre-qualified tenderers as illegal, arbitrary and unconstitutional apart from being contrary to public interest and to quash the subsequent proceedings in having selected the nine tenderers.

12. After the writ petition was filed additional affidavit was filed by the petitioner saying that the works are also proposed to be given in a suitably large and

convenient packages by clubbing different kinds of works like construction of dam, masonary projects, construction of spillways and canals, to name few. Various contractors have experience in different fields. Very rarely do the contractors have experience in all the fields. Except for calling for the particulars relating to the gross turn over of business, no care has been taken for assessing or scrutinizing the expertise of each contractor for all the works that would be involved in the handing over of such comprehensive purchase. When works are being awarded in large packages comprehensively by covering different kinds of works, the same would result in a person not having requisite experience for one or two items of works, also being allotted the same. For example, the petitioner alleged that a contractor conversant with bund construction and masonary construction of dams may not have any experience or expertise for construction of canals and vice versa. When a comprehensive work involving both is being granted the same would result in the work being carried on by an inexperienced and a non-proficient person, which would result in defeating the specified and proclaimed object of having works done only through experienced and expert contractors.

13. On 24.8.2004, when the petition came up for consideration before us, it was simply adjourned to next week to enable learned Advocate-General to have instructions in the matter. On 31.8.2004, we heard learned counsel for the petitioner. Considering the nature of controversy raised in the petition, we called upon the respondents to file their respective counters. The petitioner was asked to ensure service of notice on respondents 3 to 11. Learned counsel for the petitioner insisted for issuance of interim orders as regards award of the contracts to respondents 3 to 11. As the last date for submission of tenders was 30.9.2004 and since the Bench has decided to take up hearing of the writ petition on 16.9.2004, learned Advocate-General prayed that interim order as prayed be not granted. In those circumstances, interim order was not granted. On 28.9.2004, Rule Nisi was issued and the petition was directed to be posted for hearing. We commenced hearing on 6.10.2004.

14. During the course of hearing, learned Advocate-General tried to controvert the submissions made by the learned counsel for the petitioner that nine contractors who have been identified in the Pre-qualification Documents alone would be eligible for being awarded the eight on-going projects and 18 other major

projects which the State Government had identified for being completed during the next five years at an estimated cost of Rs.26,000.00 Crores. Learned Advocate-General disputed that it is not the intention of the State Government, and, entrustment of all 26 projects is not intended to be made only in favour of nine identified firms. We noticed that such a stand taken on behalf of respondents 1 and 2 by the learned Advocate-General during the course of hearing of the writ petition is not reflected in the counter-affidavit filed by respondents 1 and 2 on 16.9.2004. We, therefore, directed fresh affidavit to be filed by the concerned Secretary of the Department of Irrigation clarifying the stand of the State Government. On 7.10.2004, fresh affidavit sworn to by Dr. C.V.S.K. Sarma, Principal Secretary to Government, I & CAD Department, was filed. On 8.10.2004, the matter was taken up, but, hearing could not be concluded, therefore, the petition was directed to be posted after Dasara Vacation ie on 25.10.2004. Learned counsel for petitioner insisted for grant of interim orders. This Court while declining to stop the on-going process of evaluating the bids, however, made it clear that bids if finalized would be subject to the result of the orders to be passed in the Writ petition. Thereafter the writ petition was heard on 25.10.2004 and 26.10.2004 and Judgment was reserved.

15. We may take on record the specific stand taken by respondents 1 and 2 in the affidavits of Dr.C.V.S.K. Sarma, Principal Secretary to Government, I & CAD Department and Sri T.S. Prakash Rao, Engineer-in-Chief (Irrigation) on the three issues arising for consideration before us, namely, (1) the change of the policy from the normal tender process to EPC turn-key system; (2) the transparency in tendering process in which nine contractors were empanelled and (3) on the question of relaxing some of the tender conditions while empanelling the nine pre-qualified contractors. It is averred in the counter-affidavits, that soon after the formation of the new Government, various developmental activities in the State were reviewed. While reviewing Irrigation Sector, it was noticed that the development in areas where the irrigation facilities are available is impressive. After taking into consideration all aspects, Government decided to go in a big way to invest in Irrigation Sector and accordingly announced to complete the eight on-going projects in two years and to take up the remaining 18 new projects and to complete them in five years. These 26 projects are estimated to cost Rs.26,000.00 crores, which include cost of land acquisition rehabilitation and resettlement, environment management package besides the cost on works. The Government has identified 51 major packages each costing above Rs.100.00 crores; 62 medium packages each

costing around Rs.50.00 crores to Rs.100.00 crores and number of minor packages. These 51 major, 62 medium and other minor packages are for the 26 projects (8 on-going + 18 new). Out of 51 major packages, so far, tenders were invited for only 29 major packages: (i) (for 11 packages costing Rs.2100.00 crores due date was 8.10.2004); (ii) (for another 11 packages costing Rs.1656.00 crores the due date was 14.10.2004); and (iii) (for the remaining 7 packages costing Rs.1833.00 crores the due date was 20.10.2004). Thus, 29 major packages for which tenders have since been invited are costing Rs.5589.00 crores. It is further stated that nine firms were short listed on 13.8.2004, which alone are empanelled and which alone are eligible to qualify to bid and participate for 29 major packages. The remaining 22 major packages will be offered in due course of time. The nine firms, which have been short listed, vide G.O.Rt.No.971 dated 13.8.2004 alone will be eligible to quote for the remaining 22 major packages to be offered in due course of time. It is also stated that the Government has provided for the present year Rs.4,000.00 crores exclusively for construction and execution of projects, out of the total estimated amount of Rs.26,000.00 crores.

16. The affidavit of Sri T.S. Prakash Rao also states that the State Government intended to incur an expenditure of Rs.26,000.00 crores for the projects mentioned in his affidavit and an additional expenditure of Rs.19,000.00 crores for 4 Mega Projects on river Godavari to be taken up in a period of five years. Such projects are Yellampalli; Dummugudem; Polavaram and Itchampalli. The eight on-going projects identified are Vamasdhara Phase I of Stage II; Tadipudi LIS; Pushkaram LIS; Somasila Project; Telugu Ganga Project; Godavari LIS; Ali Sagar LIS and Gutpa LIS. These projects are scheduled to be completed in two years time and the remaining 18 projects identified to be completed in five years include Thotapally Barrage, Janjavathi Project, Pulichintala Project, Gudlakamma Project, Ramatheertham Balancing Reservoir, Guru Raghavendra Lift Irrigation Scheme, KJ.C. Canal Modernization Project, GNSS etc.

17. As regards the change in policy, it is stated that with a view to carry out the above programme in time bound manner, the Government took into consideration the existing practice in major projects including irrigation projects, both within and outside the country, and, observed that by breaking up the works in convenient packages and entrusting them to major construction companies on EPC turn-key system, the irrigation projects are liable to be completed in scheduled time. It is

alleged that a typical irrigation project consists of some major components like dams, tunnels, main canals each costing over Rs.100 crores and some medium components like distributaries costing around Rs.50 crores and minor components like cross drainage works, minor and field channels costing between Rs.1.00 crores and Rs.10.00 crores. EPC turn key-system does not permit any cost variations or time escalations. The tenderers have to complete the assigned task within the specified time and within the quoted rate. The EPC turn-key system eliminates litigations arising out of deficiencies in designs, delays due to the reasons attributable to insufficient investigations by the department such as revision in soil classification, revision in leads and lifts in excavation and conveyance of soils. Because of these reasons, the prices quoted will be fixed and no escalations will be allowed. It is submitted that various criteria, which are prescribed for pre-qualification bids, are intended to choose competent and able contractors who have experience in execution of the irrigation projects, apart from financial capabilities. Since the State Government experienced that delay in construction of Irrigation Projects would result in escalation of cost and apart from not achieving the objects sought for within the time intended, the State Government adopted the pre-qualification bid procedure. The State Government is entitled to choose its procedure in the best interests of the State and such action cannot be found fault with. The works are being entrusted on turn-key basis ie. Engineering, Procurement and Construction (EPC) as it would considerably save escalation of the cost of the projects apart from saving the State Exchequer.

18. After assigning the reasons in resorting to EPC turn-key system as a policy matter, the affidavit further pointed out that nine firms empanelled for the major packages satisfied the qualifications and experience of man power as prescribed and the entire process was carried out in a transparent manner. Government had decided to entrust the execution of the work by prescribing pre-qualification criteria that the contractor should possess requisite pre-qualifications apart from specified financial capabilities. Accordingly, public notification inviting offers for pre-qualification for Water Resource Development Projects was published in various national newspapers having all India Editions and in Telugu local newspapers. It was also placed on the Irrigation Web Site on 1st July, 2004. The pre-qualification bids were directed to be obtained from 1st July, 2004 to 7th July, 2004 on production of valid registration from the Andhra Pradesh Government on payment of Rs.250/-.

Duly filled in pre-qualification bids were directed to be submitted on or before 12.7.2004. Pursuant to the said notification, 24 firms/contractors have submitted their pre-qualification bids within the stipulated time, which were opened in the presence of all bidders and were technically evaluated at departmental level. In the process of technical evaluation, only two bids satisfied all the conditions of pre-qualification. The remaining did not fulfil the technical evaluation.

19. Affidavit of Sri T.S. Prakash Rao clarifies that how the remaining seven contractors came to be included in the list. He states that the 2nd respondent sent a note on 20.7.2004 that only respondents 3 and 4 are fully qualified as per the prescribed pre-qualifications. As regards respondents 5 and 8, their registration with the Andhra Pradesh Government was not in force. They had applied for renewal of their registration, which were under process. These companies, however, had ISO certification. As regards 9th respondent, it is stated that description of the company was wrongly given. The correct description of 9th respondent is M/s Jayapraksh Gayathri (a joint venture). As a joint venture, it did not possess registration with A.P. Government and ISO certification. M/s Jayaprakash is having registration with A.P. Government but it does not possess ISO certification. Both of them submitted applications individually, one for registration with the A.P. Government and the other for ISO certification, which are under process. As regards Respondent No.10, it is stated that renewal of registration with A.P. Government and ISO certification is under process and similarly as regards Respondent No.11, it is stated that though it possessed ISO certification, it does not possess registration with the A.P. Government and it was informed that it had applied for the same which is under process.

20. Second respondent thus in his note opined that in the event of relaxing conditions having valid registration with the A.P. Government and ISO certification, there can be wider participation of contractors/firms in the tender process. Accordingly, in addition to the two firms who had satisfied the pre-qualifications, seven more firms were empanelled who did not possess the requisite pre-qualification criteria. In the same affidavit, Sri T.S. Prakash Rao also stated that the State Government before issuing notification inviting tenders conducted elaborate and extensive exercise and upon the same, decided to entrust the work only on the

basis of pre-qualification bids to those contractors who fulfilled the conditions mentioned in pre-qualification documents, who alone would be eligible to bid for the projects in question. It is further stated that the State Government having satisfied with the material placed by respondents 3 to 11 that they possessed the required expertise and satisfied the conditions, they were short listed for the purpose of entrusting irrigation projects. The State Government in a transparent method had chosen to adopt the pre-qualification bids.

21. A reading of the affidavits of Dr.C.V.K.S. Sarma and Sri T.S. Prakash Rao makes one thing clear that only nine short-listed firms are empanelled. They alone are eligible to quote for 51 major packages of 26 projects. Costs of the same are not mentioned in both the affidavits except stating that the costs of 29 major packages is Rs.5589 crores for which tenders were called for. The remaining 22 major packages are yet to be tendered. Since empanelling of nine firms is only for awarding major packages, it is stated that the petitioner's apprehensions that the Government will let out all major, medium and minor packages of 26 projects to the short listed contractors is denied. It is stated that the 62 medium and various other minor packages identified are to be awarded separately, the details of which however are not furnished. It is further stated that out of the 62 medium size packages identified, tenders were notified in respect of 52 medium size packages for which 46 firms were empanelled, vide G.O.Rt.No.727dated 24.9.2004, who alone are eligible to participate. Insofar as the minor projects are concerned, the Government has decided to go in for normal tender process.

22. The other respondents 3 to 11 who are empanelled-contractors, in their separate counter-affidavits have justified their empanelment stating that they possessed all the requisite pre-qualifications and the Government was competent enough to relax any conditions. Taking into consideration the overall pre-qualifications possessed by them, minor relaxation was granted. They have raised an objection about maintainability of this petition filed as PIL by the petitioner on the ground that the petitioner does not belong to the community of those who actually participated in the tender processing. He does not possess the requisite qualifications. He is neither a contractor nor has locus standi to file the petition. Petition is based on hypothetical facts and is speculative in nature. In such like petitions, based on vague allegations and hypothetical facts, Courts will not interfere in exercise of its jurisdiction. The policy of the Government to shift to EPC turn-key system from the normal tender

processing is beyond the pale of the jurisdiction of the Courts since the said decision was taken by the State Government for speedy execution of the irrigation projects, in the best interest of the State. Even otherwise also, in view of the technical aspects involved in the matter, which are in the realm of technical expertise, the petition would not be amenable to writ jurisdiction since Courts do not have the competence or the technical expertise to delve into the technical concepts.

23. In the above factual matrix, the points for consideration are the maintainability of the writ petition as PIL at the behest of the persons like the petitioner: whether interference is called for in a matter like this where Government has taken a policy decision for entrusting major packages for eight on-going projects and 18 projects which are to be undertaken by resorting to EPC turn-key system and not on usual tender basis; and whether interference is called for in the matter of empanelling/short listing nine firms identified as eligible for 59 major packages of 26 major projects.

24. We heard learned counsel for the parties, who made elaborate submissions and have also gone through the material placed on record.

25. Writ Petition, as noticed above, has not been filed by a person directly interested but by an editor of a news weekly having wide circulation and it is shown that in the past also the petitioner as well as the news weekly had brought to the notice of the Court various issues concerning the farmer community. Challenge in the writ petition is on the change in policy now adopted by the State Government to EPE generally known as Engineering Procurement Construction on turn-key system which would include investigation, design, preparation of construction drawings, cost estimates, construction maintenance and operation of the project for not less than one irrigation season. Complete go-bye has been given to the traditional system, which was vogue in the past. Deviation from the traditional system of tender processing, as per the petitioner, has been resorted to for the first time whereas the State Government says that this practice was already in vogue in the past also and now this system is prevalent elsewhere also in major projects. The reason for deviating from the traditional practice of inviting tenders after designs etc. are prepared by the officials of the State Government, is that the State Government decided to complete the construction of the on-going projects in a time bound frame to solve the acute water problem being faced in the State and to improve irrigation potential. There have been chronic drought conditions prevailing in the State resulting in large-scale suicides by the farmers. The projects in hand and to be undertaken need to be

completed in a short span with a view to have optimum utilization of available water resources. It is also stated that such procedure was in vogue in the State and was followed in Devadula Scheme (Godavari Lift irrigation Scheme), National Highway Project and NHPC etc. It is stated that with a view to carry out the projects in a time bound manner, the Government took into consideration the existing policies in major projects elsewhere including irrigation projects, both within and outside the country. It was noticed that by breaking up the works in convenient packages and entrusting them to major irrigation companies on EPE turn-key system, the irrigation projects will be completed in scheduled time. The highlight of EPE turn-key system is that it does not permit any cost variations or time escalations. The tenderers have to complete the assigned task within the specified time and within the quoted rate. The system eliminates litigations arising out of deficiencies in designs, delays due to reasons attributable to insufficient investigations by the department etc. Because of these reasons, the prices quoted will be fixed and no escalations are possible.

26. We have already noticed that the petitioner only ventilated some doubts that most of the contractors in India do not have the technical wherewithal or ability for conducting the designs, preparation of construction, drawings etc., therefore, the State ought to have adhered to the old policy of normal tender process and not resorted to a new system.

27. With this limited challenge to the new tender policy adopted by the State, without any other material placed on record to substantiate as to how the switch over to the policy of EPE on turn-key system is illegal, arbitrary, irrational or contrary to public interest, it is not permissible for the Court in exercise of its power of judicial review to interfere with the new policy of the Government.

28. It is well settled proposition of law that unless the policy decision of the State is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. The Court is not empowered to determine whether a particular public policy is fair. The administrative action is subject to judicial review only in regard to illegality or irrationality, namely, unreasonableness and procedural impropriety. It is also now settled that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, the Courts are not expected to embark upon uncharted ocean of

public policy. Courts are not expected to presume any irregularities or illegalities or unconstitutionality in the State action unless these are clearly demonstrated. The Courts also cannot substitute their opinion for the bona fide opinion of the State executive. The Courts are only concerned with the fairness of the decision making process. It is also equally true that the Courts cannot strike down a policy decision taken by the State executive merely because the Court is persuaded that another decision might have been fairer or wiser or more scientific or logic. The Supreme Court in **STATE OF M.P. v. NANDLAL JAISWAL** held that a policy decision can be interfered with by the Courts only if such decision is shown to be patently arbitrary, discriminatory or mala fide. In the matter of different modes under the rule of general application made under M.P. Excise Act, the court found that the four different modes, namely, tender, auction, fixed licence fee or such other manner were alternative to one another and any one of them could be resorted to.

29. In **G.B. MAHAJAN v. L JALGAON MUNICIPAL COUNCIL** the argument that a project envisaging a self-financing scheme was beyond the powers of the local authority was turned down. It was held that a project otherwise legal would not become impermissible when local authority instead of executing the project itself had entered into an agreement with the developer for its financing and execution. The criticism for the project was that it was an unconventional method adopted by the standard of the extant practices hitherto being followed. The Apex Court held that there must be something on record to show that the decision taken on policy adopted by the Government was impermissible. While holding so, the Court observed that with the expansion of the State's presence in the field of trade and commerce and of the range of economic and commercial enterprises of Government and its instrumentalities, there is an increasing dimension to governmental concern for stimulating efficiency, keeping costs down, improved management method, prevention of time and cost over-runs in projects, balancing of costs against time-scales, quality-control, cost-benefit ratios etc. In search of these values, it might become necessary to adopt appropriate techniques of management of projects with concomitant economic expediencies, these are essentially matters of economic policy which lack adjudicative disposition, unless they violate constitutional or legal limits on power or have demonstrable pejorative environmental implications or amount to clear abuse of power. This again is the judicial recognition of administrator's right to trial and error, as long as both trial and error are bona fide and within the limits of authority.

30. In **KRISHNAN KAKKANTH v. GOVERNMENT OF KERALA** it was held that unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, Court should avoid "embarking on uncharted ocean of public policy".

31. In the famous **Balco** case – **BALCO EMPLOYEESK UNION (REGD.) v. UNION OF INDIA,** while approving the ratio in **G.B. Mahajan's** case (supra), the Supreme Court held that the process of disinvestments is a policy decision involving complex economic factors. The Courts have consistently refrained from interfering with economic decisions as it has been recognized that economic expediencies lack adjudicative disposition and unless the economic decision, based on expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, the Courts would decline to interfere. It was further held that in matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. The Court held that no case was made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. The workers had challenged the disinvestments policy on number of grounds. The challenge was turned down holding that even the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servant can be terminated if posts are abolished. If such employee cannot make a grievance based on Part III of the Constitution or Article 311, then it cannot stand to reason that like the petitioners, non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of Part III of

the Constitution, can claim a superior or a better right than a Government servant and impugn it's change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.

32. We need not multiply decisions on this point, but, would add that the decision of the Government to resort to Engineering Procurement Construction on turn-key system, while short-listing the contractors on the basis of pre-qualification criteria is a result of the policy of the State Government which policy has not been demonstrated before us to be in any manner capricious, arbitrary, illegal or uninformed or against larger public interest. Only on reference to the format of the application and the qualification criteria, some doubts were raised by the petitioner without any lawful foundation. It is not shown to us that the State is prohibited from resorting to such a policy, which the State Government has adopted with the avowed object of speedy completion of the irrigation projects in the State. Therefore, for that reason, it will not be permissible for us, in exercise of power of judicial review, to interfere with the decision of the State Government in resorting to the policy of EPE on turn-key system. We do not find any illegality or irrationality in the policy decision of the Government warranting interference of the Court.

33. The other two questions are whether the petition as PIL is maintainable at the behest of the petitioner, and, whether any interference is called for in the matter of empanelling/short listing nine firms identified as being eligible for 51 major packages of 26 projects, more particularly, when neither the petitioner was a tenderer nor he is a person aggrieved.

34. Before we deal with the aforesaid questions, it would be apt to notice the observations of the Supreme Court in **RAMANA DAYARAM SHETTY v. INTERNATIIONAL AIRPORT AUTHORITY OFL INDIA** that it is imperative in a democracy governed by the rule of law that governmental action must be kept within the limits of law and if there is any transgression, the court must be ready to condemn it. It is a matter of historical experience that there is a tendency in every government to assume more and more powers and since it is not an uncommon phenomenon in some countries that the legislative check is getting diluted, it is left to the Court, the only other reviewing authority under the Constitution, to be

increasingly vigilant to ensure observance with the rule of law and in this task, the Court must not flinch or falter.

35. The petitioner herein has tried to lay emphasis on an important and vital aspect that while floating tender and inviting applications from reputed/leading construction agencies to quote their bids on Engineering Procurement Construction on turn-key system, certain conditions were prescribed that only those reputed/leading construction agencies can participate in the pre-qualification bid "who are registered with Government of Andhra Pradesh" and who satisfy the eligibility criteria as specified in pre-qualification bids/offers. Emphasis was laid on one aspect that even as per the stand of respondents 1 and 2 pursuant to the notification 24 firms/contractors submitted their pre-qualification bids within the stipulated period which were technically evaluated at the departmental level. Respondent No.2 identified only two bidders satisfying all the pre-qualification conditions. Others did not fulfil the essential conditions. Accordingly, a note was sent on 20.7.2004 by 2nd respondent to the State Government that only respondents 3 and 4 are fully qualified. The note pointed out that though registration of respondents 5 to 8 with the Andhra Pradesh Government was not in force, they had applied for the renewal of registration to the Engineer-in-Chief, which was under process. Note further says that description of 9th respondent was wrongly given. As on the date the bid was submitted, M/s Jayaprakash Gayathri, joint venture did not possess registration with A.P. Government or ISO certification. One of the partners of joint venture i.e M/s Jayapraksh was having registration with A.P Government but did not have the ISO certification and the other was having ISO certification but not registration with A.P. Government. As such, one had applied for registration with the State Government and the other for ISO certification, which requests were under process. As regards 10th respondent, it possessed the other qualifications but was neither having any valid registration with the State of A.P. nor a valid ISO certification. The 11th respondent though possessed ISO certification, but was not having registration with the State of Andhra Pradesh and had applied for registration, which was under process. This note submitted by the 2nd respondent is stated to have been examined by the State Government and considering the report of the 2nd respondent, the Government decided to empanel respondents 3 to 9 by notification dated 13.8.2004.

36. It was thus urged relaxation in the essential criteria in the matter of qualifications prescribed for enlisting as a pre-qualified tenderer was granted, which could not have been done, more particularly, after the notification had been issued and bids had been submitted. There is no transparency in the matter of taking decision to relax the pre-qualification criteria. It was alleged that such action of the respondents in selectively granting relaxation to some of the selected agencies is not bona fide and is motivated by extraneous considerations. In any case, the petitioner's case is that the procedure adopted by the State does not satisfy the tests of transparency, reasonableness and fairness. It was contended that the resultant effect of the impugned action of respondents 1 and 2 in selecting only nine tenderers would vitally affect public interest and would continue to impair public rights and finances. It was urged that had it been publicly known or made known by the official respondents prior to the date of submission of bids that registration with the State of Andhra Pradesh is not a condition precedent for bidding in the pre-qualified bids, there is every possibility that in addition to the present nine firms who have been short-listed, there would have been more such like firms coming forward to bid for such major projects of considerable magnitude.

37. It was also urged that the tender notice specifically pointed out that bids were being called to complete all important projects in progress and also number of new projects are to come up in the near future to be completed within a period of five years to augment the irrigation potential, which is also the stand taken in the counter-affidavit by the respondents 1 and 2. Therefore, the primary concern of the petitioner is as regards the transparency and fairness in the decision making process of the Government in giving a go-bye to the essential pre-qualifications of the tenderers, namely, registration with the Government of Andhra Pradesh and valid ISO certification. Only two unofficial respondents had registration with the Government of Andhra Pradesh and ISO certification. Other unofficial respondents did not possess the said qualifications as on the date of submitting their bids. The 2nd respondent in his affidavit categorically stated that only two bids satisfied all the conditions of pre-qualifications. The remaining did not qualify during technical evaluation. Out of the seven contractors, most of their registration with State of Andhra Pradesh had expired. Requests for renewal were under process. In respect of few they had applied for registration as well as ISO certification. We are not informed that whether renewal was applied for after the issuance of the notification

inviting bids or prior to that.

38. There is no dispute that in the matter of execution of irrigation projects of such a magnitude, it is essential to maintain sanctity and integrity of process of evaluating the bids. Once conditions had been stipulated and condition precedent being that the bidders must possess pre-qualifications, it was but natural that only those bidders who fulfil pre-qualifications are permitted to bid and participate in the tender process. Adherence to instructions cannot be given a go-bye. Otherwise, it would amount to encouraging and providing scope for discrimination, arbitrariness and favoritism, which are totally opposed to rule of law and our constitutional values. The very purpose of prescribing the pre-qualifications in the tender notice is to ensure its enforcement lest the rule of law should be a causality.

39. It is an admitted fact that neither in the notice inviting to offer bids nor in the pre-qualification documents, power was reserved with the Department or the State Government to relax any of the conditions. There being no such power reserved with the Government to relax or waive a rule or condition of any pre-qualification, the action of respondents 1 and 2 in relaxing or waiving essential qualification is nothing but arbitrary exercise of power thereby impairing the rule of transparency and fairness providing room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts. The Apex Court has held that such an approach has always to be avoided. Even in such cases where power to relax or waive a rule or a condition exists; the law expects that such power existing in the rules has to be strictly complied with.

40. In **TATA CELLULAR v. UNION OF INDIA,** the scope of judicial review was examined by the Supreme Court. In that case a tender was awarded by a public authority for carrying out certain work. The Court acknowledged that the principles of judicial review can apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, there are inherent limitations in the exercise of that power of judicial review. The Court also observed that the right to choose cannot be considered as an arbitrary power. Of course, if this power is exercised for any collateral purpose, the exercise of that power will be struck down. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters and the need to

remedy any unfairness. Such an unfairness is set right by judicial review.

In **RAUNAQ INTERNATIONAL LTD. V. I.V.R. CONSTRUCTION LTD,** the precise question was about the relaxation of some of the conditions of tender, which the Authority had granted in favour of M/s Raunaq International Ltd. Relaxation of the terms of tender was permissible under the terms of the tender, which was questioned by M/s I.V.R. Constructions Ltd. Challenge was turned down by the Supreme court on the ground that the very challenge to the grant of relaxation in favour of the successful bidder was misplaced since the party challenging the relaxation itself did not fulfill the requisite criteria. There was power to grant relaxation under the terms of the tender, which was held to have rightly been granted.

41. In **WEST BENGAL ELECTRICITY BOARD v. PATEL ENGINEERING CO., LTD.** four bidders were not permitted by the High Court of Calcutta to correct a small error, which had crept in the tender documents. The West Bengal Electricity Board was directed to evaluate all the bid documents. In that context, the Supreme Court held that in an international competitive bidding, which postulates keen competition and high efficiency where bidders who fulfill the pre-qualifications are entitled to bid, adherence to the instructions cannot be given a go-bye. Otherwise, it will encourage and provide scope for discrimination, arbitrariness and favouritism, which are totally opposed to rule of law. It was held that the very purpose of issuing rules/instructions is to ensure their enforcement lest rule of law should be a causality. Relaxation or waiver of a rule or a condition, unless so provided in the tender documents by the State or its agencies, in favour of one bidder would create justifiable doubt in the minds of the other bidders and would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts. The Court also ruled that where power to relax or waive a rule or condition exists under the rules, it should be done strictly in compliance with the rules.

42. When the notification inviting bids or the guidelines appended to the tender document nowhere reserved any right with the State Government to relax any of the terms or conditions of tender, granting relaxation in favour of those tenderers who did not fulfil the pre-qualification criteria, is nothing but arbitrary exercise of power. We are not to be misunderstood that the State Government has no power at all to relax or waive a rule or a condition where circumstances would justify in doing so.

But what was expected as a matter of fair play before taking any decision to relax in favour of only chosen ones, is to have made known to all those who would otherwise been interested to participate in the bidding process. A question would arise for consideration that what considerations prevailed with the State Government in granting relaxation in favour of only a few and not considering a vital aspect that, had this condition or essential pre-qualification of having registration with the State of Andhra Pradesh and ISO certification not been there in the tender notification, were there are other contractors or major construction companies of national or international level, doing similar type of works and expertise, who might have offered their bids? Whether the authority which waived the aforesaid conditions, before proceeding to waive or relax such a condition in favour of only seven contractors, has applied its mind to the above aspect or not, is not demonstrated before us. Had it been made known to all in the tender notification or pre-qualification documents that the State Government will consider relaxing the pre-qualification conditions of having registration with the State of Andhra Pradesh or ISO certification, possibility cannot be ruled out that there would have been equal number of bidders coming forward to offer their bids and participate in the selection process of pre-qualified tenderers, may be having more expertise in such projects. Possibility also cannot be ruled out that several firms not having registration with the State of Andhra Pradesh, because of the pre-conditions imposed in the tender notice, would not have even bothered to offer their bids even though they would have otherwise fulfilled the other pre-qualifications criteria. They must have thought of not applying for the pre-qualification tender process, as they did not completely satisfy the eligibility criteria. Because of the conditions imposed in the notification that bids with pre-qualifications only are invited from reputed/leading construction companies, which are registered with the Government of Andhra Pradesh and having ISO certification, such construction companies are deprived of an opportunity of participating in the pre-qualified tender process. In such a situations, the principle of fair play and reasonableness assumes importance.

43. We may also notice that even the general instructions to applicants also made it clear that bidder/firm/company should have ISO certification and in case the applicant is from a joint venture it should satisfy the minimum criteria which inter alia provide that partners of the joint venture shall not be more than three and all the partners of joint venture should possess ISO certificate. All joint venture partners

should have registration with the Government of Andhra Pradesh with valid registration under special class. The General instructions further pointed out that eligibility for the pre-qualification bid will be decided only on the strength of information/documents submitted by them along with pre-qualification bids and the information given in the pre-qualification bid will be valid as per the norms/criterion given in the pre-qualification documents. This being the position, post-notification relaxation of the essential criteria or in other words relaxing or waiving of essential pre-qualifications or conditions in favour of only chosen ones, after the bids were invited and submitted is nothing but an arbitrary exercise of power amenable to judicial review. As noticed above, it was not at all urged before us nor proved that there was any application of mind by the authority exercising the powers that had the relaxed conditions been there in the general instructions supplied to the applicants or had it been known to all in the notification/pre-qualification documents that the bidders not having registration with the Government of Andhra Pradesh and ISO certification can also offer their bids and participate in selection process and that they may also simultaneously apply for registration with the State of Andhra Pradesh and for ISO certification, there would have been other bidders coming forward to offer their bids. Possibility cannot also be ruled out that number of other contractors not having registration with the State of Andhra Pradesh or with ISO certification might have validly submitted their bids. For this reason also, we are of the view that the action of the respondents in waiving an essential pre-qualification condition in favour the seven bidders qualifying them as pre-qualified tenderers is patently arbitrary, irrational, discriminatory suffering from malice in law and for that reason the selection of the seven bidders to be placed on the select list of short-listed pre-qualified tenderers is bad in law.

44. The law relating to judicial review in the matter of award of a contract by the State and its Corporations and bodies acting as instrumentalities and agencies of the Government is almost settled by the decisions of the Supreme Court in **R.D. S H E T T Y v. INTERNATIONAL AIRPORT AUTHORITY, FERTILISER CORPORATION MAKGAR UNION v. UNION OF INDIA, ASSISTANT COLLECTOR, CENTRAL EXCISE v. DUNLP INDIA LTD., TATA CELLULAR v. UNION OF INDIA (supra), RAMNIKLAL N. BUTTA v. STATE OF MAHARASHTRA, and RANQ INTERNATIONAL Ltd v. I.V.R. CONSTRUCTION**

LTD. (supra). One principle, which has always been emphasized, is that the State, its Corporations and agencies have the public duty to be fair to all concerned. When some defects are found in decision making process, the Court must exercise its discretionary power under Article 226 but with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. It is also true that the Court in exercise of the power under Article 226 will not interfere in matters involving technical expertise, but, at the same time, it cannot be said that the Court has no competence to interfere where such matters are not dealt with in a transparent and fair manner or dealt with in an arbitrary and discriminatory fashion. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene.

45. Now the question that arises for our consideration is, whether in such like situation, the petition filed by a public-spirited person, who had on earlier occasion also challenged the action of the authorities or brought to the notice of the Court certain matters of public importance, would or would not be maintainable.

46. In **Balco employees Union** case (supra), the Court held that public interest litigation was an innovation essentially to safeguard and protect the human rights of those people who were unable to protect themselves. But with passage of time, the PIL jurisdiction was expanded so as to encompass within its ambit subjects as probity in public life, granting of largesse in the form of licences, protecting environment and the like. The Judgment also noticed the fact that Prof. S.B. Sathe had summarized the extent of the jurisdiction, which is now being exercised by various Courts in other spheres. According to Prof. Sathe, a PIL has to satisfy one or more of the following parameters, which are not exclusive but merely descriptive:

> Where the concerns underlying a petition are not individualist but are shared widely by a large number of people (bonded labour, under-trial prisoners, prison inmates); where the affected persons belong to the disadvantaged sections of society (Women, children, bonded labour unorganized labour etc.); Where judicial law making is necessary to avoid exploitation (inter-country adoption, the education of the children of the prostitutes); Where judicial intervention is necessary for the protection of the sanctity of democratic institutions (independence of

the judiciary, existence of grievances redressal forums); where administrative decision r elated to development are harmful to the resources such as air or water.

47. As noticed above, the petitioner himself has no private interest in the matter. He has just projected the arbitrariness in the exercise of power by the State and in its action in short-listing nine contractors identifying them as being eligible for award of contracts in respect of 51 major packages relating to 26 major irrigation projects in the State, the implications of which are far-reaching and also having direct impact on public finance. It was stated in the notification inviting bids that the Government is proposing to complete all the important projects in progress and would also take up number of new projects. When the Court specifically called upon respondents 1 and 2 to state whether short-listing of nine contractors was only for the purpose of the on-going projects which are eight in number or would cover the other major projects as well, which are 18 in number, Dr.C.V.S.K. Sarma, Principal Secretary to Government, I & CAD Department, filed additional affidavit stating that the projects that are identified are: 8 on-going projects which are stipulated to be completed within two years and 18 other projects which are to be completed in five years and that the State government is very particular about the completion of the irrigation projects within the time frame and government has identified 51 major packages which costs about Rs.100.00 cores each and 62 medium and minor packages which costs around Rs.50.00 croes each for all these 26 projects. Nine firms short-listed are eligible to quote for 29 major packages for which tenders were invited and for the remaining 22 major packages tenders will also be offered in due course. Thus, these nine firms who have already been short-listed alone are entitled to bid for 51 major packages relatable to 26 major projects in the State, thereby excluding all others, who might be equally or better qualified having better expertise.

48. Such a decision taken in haste without ensuring modification of the notification ensuring others also to participate, having no registration with the State of Andhra Pradesh or no ISO certification, as on the date of submitting their bids, had it been challenged by those would be liable to be quashed. Therefore, the persons like the petitioner herein cannot be said to be an unconcerned person. The petition has to be termed as having been filed in larger public interest. It is not a dispute between two tenderers. May be that there would have been more experienced and

renowned construction companies having more expertise in such like projects coming forward and offering their bids for lesser amount. Therefore, the action of the State Government in selecting only nine firms becomes a matter of larger public importance and interest and, as such, the objection of the respondents that the writ petition at the behest of the petitioner is not maintainable cannot be sustained and accordingly we overrule the said objection.

In view of the above discussion, we are of the view that the writ petition, to the extent to which challenge is made to the action of respondents 1 and 2 identifying and short-listing the seven bidders by granting relaxation in their favour as regards registration with the State of Andhra Pradesh/iSO certification, must succeed.

49. Now, the question that remains for consideration is, whether we should set aside the entire order of short-listing the nine firms whose bids have already been evaluated by the Technical Evaluation Committee, or should we pass any other appropriate order in the facts and circumstances of the case. Having regard to the facts and circumstances of the case, particularly, the desire of the Government to have all the irrigation projects in the State completed with expedition and within a time frame to augment the irrigation potential in the State, which is in the best interest and welfare of the State, we are of the considered view that it would not be appropriate to set aside the entire selection process of pre-tender qualification; but, it would be just and fair in case direction is issued to the State Government to issue a fresh notification inviting other agencies/bidders, if any, not having registration with the State of Andhra Pradesh or ISO certification, who otherwise are interested to participate in the pre-qualification tender process, to apply for the same, making it clear that they can also simultaneously apply for having registration with the State of Andhra Pradesh or apply for ISO certification. In case such agencies would offer their bids, such bids be also got evaluated by the same Technical Evaluation Committee which had evaluated the earlier bids and, in case, they are also found to be fulfilling the requisite pre-qualification criteria, they shall also be considered for being short-listed as eligible pre-qualified tenderers along with others and such short-listed agencies/tenderers will also be entitled to participate in the bids for award or entrustment of the irrigation packages. Till this process is completed, we restrain the respondents 1 and 2 from going ahead in awarding any of the 51 packages aforementioned or any part thereof to any of the nine short-listed tenderers-respondents.

50. The Writ Petition is disposed of with the above directions. Having regard to the facts and circumstances of the case, there shall be no order as to costs.

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DEVINDER GUPTA, CJ

18th November, 2004. _____

C.V. RAMULU, J

After the judgment is announced, learned counsel for the petitioner pointed out that during the pendency of the writ petition, respondents 1 and 2 have gone ahead in awarding some of the 51 packages aforementioned to some of the nine short listed tenderers. Since it was made clear that any action done during the pendency of the writ petition will be subject to the result of the writ petition, we hereby quash and set aside anything done pursuant to calling for tenders for awarding any of the 51 packages aforementioned or any part thereof.

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DEVINDER GUPTA, CJ

18th November, 2004.

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C.V. RAMULU, J

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3. The Principal Secretary, Irrigation and Command Area Development, Government of A.P., Secretariat., Hyderabad.

4. The Engineer-in-chief, Irrigation Department, Erramanzil, Hyderabad.

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